

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GARY BARNETT,

Plaintiff,

Case No. C10-650-RSL-BAT

v.

CARL BEATTY, *et al.*,

Defendants.

**REPORT AND RECOMMENDATION**

On April 15, 2010, plaintiff Gary Barnett presented to this Court for filing a civil rights complaint under 42 U.S.C. § 1983 together with an application to proceed with this action *in forma pauperis*. (*See* Dkt. No. 1.) At the time he filed this action, plaintiff was in the custody of the Washington Department of Corrections. Plaintiff alleged in his complaint that his rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution were violated during the course of a search of his person which was conducted at the Washington State Reformatory in September 2008. (*See id.* and Dkt. No. 7.)

On May 17, 2010, plaintiff's application for leave to proceed *in forma pauperis* was granted and his complaint was filed. (*See* Dkt. Nos. 6 and 7.) On the same date, this Court issued an Order declining to serve plaintiff's complaint, and granting him leave to amend,

1 because plaintiff had failed to adequately allege a cause of action against several of the named  
2 defendants. (*See* Dkt. No. 8.) Plaintiff filed an amended complaint on June 7, 2010, and that  
3 complaint was subsequently ordered served on four named defendants: Carl Beatty, Shermon  
4 Fultz, Paula Chandler and Therese Hutchins. (*See* Dkt. Nos. 12 and 15.)

5 On October 29, 2010, defendants filed a motion for summary judgment which was noted  
6 on the Court's calendar for consideration on November 26, 2010. (Dkt. No. 32.) Plaintiff filed  
7 no response to that motion and, on November 24, 2010, defendants filed a reply brief in which  
8 they advised the Court that the copy of their motion sent to plaintiff at his address of record was  
9 returned as undeliverable. (Dkt. No. 37.) The Court thereafter issued an Order directing  
10 plaintiff to advise the Court whether he intended to proceed with this action. (Dkt. No. 39.) A  
11 copy of that Order was mailed to plaintiff at his address of record and was returned as  
12 undeliverable on February 15, 2011. (Dkt. No. 40.) To date, plaintiff has not provided the court  
13 with a new address.

14 Because over sixty days have passed since mail directed to plaintiff at his address of  
15 record was returned by the post office, and because plaintiff has not notified the Court of his  
16 current address, this action should be dismissed, without prejudice, for failure to prosecute  
17 pursuant to Local Rule CR 41(b)(2). A proposed order accompanies this Report and  
18 Recommendation.

19 DATED this 18<sup>th</sup> day of April, 2011.

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BRIAN A. TSUCHIDA  
United States Magistrate Judge